

J.C. Watts, Jr.  
Chairman  
4th District, Oklahoma

*House Meets at 10:00 a.m. for Legislative Business*

*Anticipated Floor Action:*

**H.J. Res. 33—Flag Desecration Constitutional Amendment**  
**Motion to Go to Conference on H.R. 775 (Y2K Readiness and Responsibility Act)**  
**H.R. 1658—Civil Asset Forfeiture Reform Act**



**H.J. Res. 33—Flag Desecration Constitutional Amendment (Continuing Consideration)**

**Floor Situation:** The House is scheduled to complete consideration of H.J. Res. 33 as its first order of business. Yesterday, the House completed general debate and will now proceed to consider a substitute amendment, if offered, under a structured rule. The rule makes in order an amendment in the nature of a substitute if offered by Mr. Conyers or a designee, debatable for one hour, equally divided between a proponent or opponent. Finally, the rule provides one motion to recommit, with or without instructions.

**Summary:** H.J. Res. 33 proposes an amendment to the Constitution which states that “Congress shall have the power to prohibit the physical desecration of the flag of the United States.” It defines neither “desecration” nor “flag,” and does not itself prohibit any action. Rather, it enables Congress to enact flag-protection legislation without fear of such laws being ruled unconstitutional. In the 105<sup>th</sup> Congress, the House approved an identical resolution (H.J. Res. 54; *H.Rept. 105-121*) by a vote of 310-114 on June 12, 1997; however, the Senate did not act on the measure.

Supporters of the resolution argue that the nation’s flag is a sacred and inviolable symbol of our country’s freedom, for which many have fought and died. They note also that roughly 80 percent of Americans have consistently supported the amendment and see no incompatibility between free speech and such an amendment. Opponents contend that the resolution will fetter American citizens’ civil liberties trivializes the process of amending the Constitution. Opponents also charge that reverence for this nation and its ideals cannot be imposed from without and should not be extracted by statute. The resolution was introduced by Mr. Cunningham and was reported by the Judiciary Committee by voice vote on May 26, 1999.

**Views:** The Republican leadership supports passage of the bill. The president is not required to sign amendments to the Constitution; however, the Clinton Administration opposes the amendment proposed by the resolution.

**Amendments:** As stated above, the rule makes in order a substitute amendment if offered by Mr. Conyers or a designee:

**Mr. Watt** may offer an amendment in the nature of a substitute which states: “Not inconsistent with the first article of amendment to this Constitution, the Congress shall have the power to prohibit the physical desecration of the flag of the United States.” *Staff Contact: Anthony Fox, x6-7680*

**Additional Information:** See *Legislative Digest*, Vol. XXVIII, #18, June 18, 1999.



## **Motion to Go to Conference on H.R. 775 (Y2K Readiness and Responsibility Act)**

**Floor Situation:** Mr. Davis (VA) or a designee is expected to offer a motion to go to conference on H.R. 775 after the House completes consideration of H.J. Res. 33. A motion to instruct may be made immediately after this request and before the chair appoints conferees. Instructions are considered the prerogative of the minority and are debatable for one hour.

**Summary:** The motion, if agreed to, will establish a House-Senate conference to resolve differences between H.R. 775—which passed the House by a vote of 236-190 on May 12, 1999—and the Senate version, S. 96, which passed by a vote of 62-37 on June 15, 1999. Once agreed to, the motion permits the chair to appoint conferees. Details of a possible motion to instruct were unavailable at press time.

**Views:** The Republican Leadership supports the motion to go to conference and opposes any motion to instruct conferees that would weaken the position of House negotiators.

**Additional Information:** See *Legislative Digest*, Vol. XXVIII, #13, May 7, 1999.



## **H.R. 1658—Civil Asset Forfeiture Reform Act**

**Floor Situation:** The House is scheduled to consider H.R. 1658 after it appoints conferees on H.R. 775. On Tuesday, June 22, the Rules Committee granted a modified open rule that provides one hour of general debate, equally divided between the chairman and ranking member of the Judiciary Committee. The rule makes in order a committee amendment in the nature of a substitute as base text. In addition, the rule makes in order an amendment by Chairman Hyde or his designee to make technical corrections to the bill. It requires that amendments be pre-printed in the *Congressional Record*. The chairman of the Committee

of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

**Summary:** The measure amends the federal criminal code to establish general rules for civil forfeiture proceedings. A number of federal courts have held that in order to employ the “innocent owner” defense, owners of property that has been used in a crime—such as a boat or a car—must show a lack of consent *and* a lack of knowledge. The bill stipulates that a lack of consent *or* a lack of knowledge is sufficient if the owner took reasonable steps to prevent the illegal use of the property. In addition, the measure requires the federal government to prove with “clear and convincing” evidence that property used illegally is subject to forfeiture—and so must prove criminality, not merely allege it.

The bill also requires the government to make a reasonable effort to provide fair notice to owners of property soon to be forfeited. The bill increases the time for challenging any civil forfeiture proceeding to 30 days; currently, a property owner has only 10 days to challenge a federal judicial forfeiture and 20 days for a federal administrative forfeiture.

Finally, the bill (1) eliminates the requirement that a property owner must pay 10 percent of the value of the seized property—the cost bond requirement—to contest an administrative forfeiture; (2) allows seized property to be released to the owner if continued possession would cause substantial hardship; (3) allows courts to appoint counsel to those who cannot afford representation; and (4) allows property owners to sue the government for negligence if the seized property is damaged or lost while in the government’s possession. The bill was introduced by Mr. Hyde; the Judiciary Committee reported the bill by a vote of 27-3 on June 15, 1999.

**Views:** The Republican leadership has taken no official position on the bill. The Clinton Administration opposes the bill and has threatened to veto it; however, the president has indicated support for the Hutchinson/Weiner/Sweeney substitute.

**Amendments:** At press time, the *Legislative Digest* was aware of the following amendments to H.R. 1658:

**Mr. Gilman or Mr. Sweeney** may offer an amendment (#1, #2, or #17) to add to the bill’s definition of an “innocent owner” property owners who (1) were not willfully blind to, (2) did not authorize, (3) were not privy to, or (4) were not deliberately indifferent to the illegal use of the property. **Staff Contact: Geoff Gleason (Sweeney), x5-5614**

**Mr. Gilman** may offer an amendment (#3) to expand the scope of current law’s permissible asset forfeiture to include any property used for or resulting from visa and passport offenses. **Contact: x5-3776**

**Messrs. Hutchinson, Weiner, and Sweeney** may offer an amendment in the nature of a substitute (#25) to:

- \* replace the bill’s “clear and convincing evidence” burden of proof with a “preponderance of the evidence” standard. Both the bill and the substitute place the burden of proof on the government rather than on citizens;

- \* modify bill language that permits the appointment of counsel for indigents who cannot afford a lawyer—specifically, the substitute directs federal courts to consider the nature and value of the property and allows the government the opportunity to present evidence and examine the individual claiming indigence;
- \* eliminate the bill’s provision that establishes an “innocent owner” defense for those who receive property through probate;
- \* modify bill language that allows a claimant to recover property pending trial if he or she can show that the forfeiture will cause substantial hardship by (1) directing courts to consider whether the claimant has sufficient ties to the community to ensure that property will be available at the time of trial; (2) stipulating that when property is returned under a showing of hardship, courts may enter an order ensuring that the property is maintained while the forfeiture is pending, including inspecting the property; (3) permitting the government to place a lien on the property pending resolution of the claim; and (4) prohibiting contraband, currency, and property that is likely to be used to commit additional crimes from being released;
- \* stipulate that if the government sends an inaccurate notice of forfeiture within 60 days—such as a notice to the wrong address—the forfeiture must be set aside pending receipt of the notice, thus avoiding future nullification of a forfeiture action. The substitute also specifies that the 30-day period to contest the forfeiture does not begin until he or she actually receives the notice. Finally, the substitute gives claimants two years from the date of forfeiture to file a claim based on the government’s failure to provide notice; and
- \* apply the bill only to cases that are filed after enactment. *Stacey Shrader (Hutchinson), x5-4301*

**Mr. Hutchinson** may decide to break up the substitute into individual amendments and offer them separately. These include:

- \* an amendment (#4) to stipulate that if the government sends an inaccurate notice of forfeiture within 60 days—such as a notice to the wrong address—the forfeiture must be set aside pending receipt of the notice, thus avoiding future nullification of a forfeiture action. It also specifies that the 30-day period to contest the forfeiture does not begin until he or she actually receives the notice. The substitute gives claimants two year from the date of forfeiture to file a claim based on the government’s failure to provide notice;
- \* an amendment (#5) to direct federal courts to consider the nature and value of the property belonging to individuals claiming indigence and allows the government the opportunity to present evidence and examine the claimant before a counsel is appointed;
- \* an amendment (#6) to replace the bill’s “clear and convincing evidence” burden of proof with a “preponderance of the evidence” standard;
- \* an amendment (#7) to eliminate the bill’s “innocent owner” defense for those who receive property through probate;

- \* an amendment (#8) to modify the bill's provision allowing a claimant to recover property pending trial if he or she can show that the forfeiture will cause substantial hardship by (1) directing courts to consider whether the claimant has sufficient ties to the community to ensure that property will be available at the time of trial; (2) stipulating that when property is returned under a showing of hardship, courts may enter an order ensuring that the property is maintained while the forfeiture is pending, including inspecting the property; (3) permitting the government to place a lien on the property pending resolution of the claim; and (4) prohibiting contraband, currency, and property that is likely to be used to commit additional crimes from being released;
- \* an amendment (#9) to apply the bill only to cases that are filed after enactment; and
- \* an amendment (#10) to disentitle fugitives from challenging an asset forfeiture. **Staff Contact: Stacey Shrader, x5-4301**

**Mr. Hyde** may offer an amendment (#12) to require states, when distributing forfeiture funds under the federal “adoptive forfeiture” program—which allows local law enforcement to seize assets under federal statutes and keep up to 80 percent of the proceeds—to adhere to their own forfeiture laws. Some states have laws that require a given percentage of forfeiture proceeds to go toward education, for example; but the federal adoptive forfeiture program is sometimes employed as a means of superceding such statutes. **Staff Contact: George Fishman, x5-5727**

**Ms. Meek** may offer an amendment (#14 or #26), to either the **Hutchinson** substitute or the underlying bill, to expand current law’s scope of permissible asset forfeiture related to alien smuggling from vessels, vehicles, and aircraft to any property that is the result of, or is used to facilitate, alien smuggling. **Staff Contact: Gary Goldberg, x5-4506**

**Mr. Paul** may offer an amendment (#15) to prohibit the federal government from seizing any property unless the owner has been convicted of the criminal offense that makes the property subject to civil forfeiture. **Contact: x5-2831**

**Mrs. Roukema** may offer an amendment (#27) to modify current law to allow federal law enforcement authorities to seize any monetary instrument (e.g., cash, a check, etc.) in excess of \$10,000 from an individual if he or she (1) did not file a currency report (which is required if more than \$10,000 is withdrawn, transferred, etc.), and (2) attempted to conceal the money—either in luggage, in a vehicle, or on his or her person—while entering or leaving the United States. The amendment directs federal courts to consider returning a portion of the money if the individual shows by a preponderance of the evidence that it was derived from a legitimate source and was intended for a lawful purpose. **Pat McCarty, x5-2258**

**Mr. Sweeney** may offer an amendment to require that three percent of federal asset forfeiture trust funds be set aside for schools to implement and maintain drug education and prevention programs. **Staff Contact: Geoff Gleason, x5-5614**

**Additional Information:** See *Legislative Digest*, Vol. XXVIII, #18, June 18, 1999.

